

***United States Court of Appeals
for the Second Circuit***



**APPELLANT'S
BRIEF &
APPENDIX**

75-7642

UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

VICTOR O. PRINCIOTTI,

Plaintiff-Appellant,

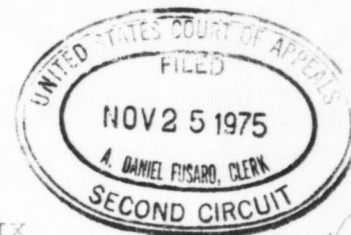
-against-

MEDITERRANEAN MARINE LINES, INC.

Defendant-Appellee,

COURT OF APPEALS NO.

75-8076



PLAINTIFF-APPELLANT'S BRIEF AND APPENDIX

QUESTIONS PRESENTED

1. Did a defective ice making machine so flood the approaching steps to the deck below that the plaintiff was required to walk on as to make it hazardous and unseaworthy for the purpose intended?

2. Was there anything that the plaintiff could have done to prevent the happening of the accident, or that he did, which caused him to slip and fall?

3. Was the defendant negligent in permitting a defective machine to flood the area having notice of the defective condition for many days before the occurrence of the accident?

4. Did the court commit reversible error in portions of its charge and by excluding testimony of an essential witness.

PAGINATION AS IN ORIGINAL COPY

STATEMENT OF THE CASE

This action was brought to recover damages for personal injuries sustained by Victor O. Princiotti, a Seaman employed on board the SS DEFIANCE.

The case was tried in the United States District Court for the Southern District of New York before the Honorable Edward Weinfeld and a Jury on the 20th, 21st and 22nd days of January, 1975.

The Jury returned a verdict in favor of the defendant.

The accident occurred on the 14th day of May, 1972 at approximately 1:30 P.M. as a result of an overflow from a leaking defective ice-making machine which caused the kentile flooring and steps leading therefrom to the deck below, to become flooded, slippery and dangerous, resulting in the plaintiff's slipping and falling in spite of his utmost care and caution in walking through the flooded area which was the only passageway available to him.

The defendant denied the existence of any defect or flooding conditions. The court denied the use of the deposition of an expert who was a fellow Seaman, the electrician of the vessel, who had personal knowledge of the conditions complained of and who was in a position to testify as to photographs in evidence which showed the conditions complained of as they existed at the time of the accident and which the witness had testified in his deposition showing the same conditions that he witnessed personally showing the defective ice-making machine and the flooded kentile flooring.

The exclusion of the disinterested witness's testimony as to the fundamental and basic proof of liability denied plaintiff his day in court on the merits.

Plaintiff was denied the benefit of the testimony of said disinterested witness and the Jury not having the benefit of such important testimony, accepted the defendant's version of the accident and returned a verdict in favor of the defendant.

POINT I

THE EXCLUSION OF THE DEPOSITION OF
ELI M. WEIR PAGES 41, 42, 43 and 44
INCLUSIVE WAS ERROR

Exhibits 1 through 24 consisting of pictures which were reasonable representations of the way the machine in question and the area were at the time of the accident, were offered in evidence by consent, as exhibits 1 through 24, page 2.

There was no reason why the expert electrician could not testify as to the pictures just because he was not present at the time of the accident, when he knew by his own observations that the condition which the picture showed at the time of the accident was the same condition which he had personally observed on many occasions before, as well as after the accident.

POINT II

DEFENDANT DID NOT SUSTAIN ITS BURDEN
OF PROOF AS TO CONTRIBUTORY NEGLIGENCE

The defendant failed to sustain its burden of proof as to whether plaintiff did anything which in any wise could possibly be construed as an act of negligence, and the question of contributory negligence should not have been submitted to the Jury, but should have been dismissed by the court on the defendant's failure to show any evidence whatsoever as to any act on the part of the plaintiff to a proximate cause or contribute to the accident.

POINT III

THE COURT'S CHARGE WAS ERROR

The court's charge to the Jury unduly emphasized plaintiff's contributory negligence without fully informing the Jury that the defendant had the burden of proof as to any contributory negligence and not the plaintiff.

The serious denial to the plaintiff of his day in court by the exclusion of the deposition of the disinterested witness who had testified as to personal knowledge of many material facts in the case, is clearly emphasized by the court's repeated instructions that the plaintiff had the burden of sustaining his action by the preponderance of the evidence.

POINT IV

A SUMMARY OF THE TESTIMONY

ELI M. WEIR'S deposition which was excluded proved defendant's liability by describing the pictures in evidence. Reference are made to pages in deposition excluded by the court.

Describes defect of machine and platform, pages 33, 39, 40 and 41.

He personally worked at the machine, pages 36, 37, 38

Describes the defective conditions, pages 40, 41

Describes the area and the tilting deck, page 43

Describes the condition of the pipes and drain at the refrigerator, pages 48, 51, 53

Describes the custom of the ship to keep area mopped up, pages 50, 51, 52

CHESTER ROBBING, PURSER

1. Denied defective condition. Nevertheless, admitted that the ship had trouble when the icemaking machine did not work.
2. Admitted that if they had water on deck it would be slippery.

WILLIAM FRIESEN, SALES & SERVICE MANAGER
FOR TOMLINSON REFRIGERATION COMPANY

Admitted that Tomlison conducted repairs on ice-making machine but denied water leaked.

JOSE DUJON, CHIEF STEWARD

Denied that he saw any defective conditions but admitted he did see water in the alley way. He claimed it was sea water.

He admitted that there was no rubber mat going down to crew quarters. He admitted that he saw engineers working on ice-making

machine with the sheild off.

WILLIAM MUSE, A LONGSHOREMAN,
A DISINTERESTED WITNESS

Saw the defective condition of the ice-making machine
and dangerous condition of the deck.

Saw the plaintiff slip and fall.

He identified the pictures of the defective ice-making
machine and the flooded condition which made plaintiff fall.

Testified that he personally saw the ice-making machine
leaking.

VICTOR O. PRINCIOTTI

Plaintiff's testimony as to the negligence of the defendant
and his own freedom from fault was clear and direct and his
credibiliy was ^{not} impaired.

CONCLUSION

The plaintiff was denied his day in court and the judgment
of the court below should be reversed so that the plaintiff may
have the opportunity of presenting all of the important, relevant
proof to sustain his right to a verdict in his favor.

Respectfully submitted,

Victor O. Princioti
VICTOR O. PRINCIOTTI

APPENDIX

WILLIAM T. MUSE, DECKMAN, AS TO CONDITION
OF DECK AND ICE-MAKING MACHINE

Page 5, lines 4 thru 16

Q. And as you walked, what did you notice with respect to the deck in and about the ice-making machine area?

A. Well, it was leaking, water was in the passageway.

THE COURT: Water was what?

THE WITNESS: In the passageway where I was walking through.

Q. Now, how large an area did the water cover?

A. Well, all over, both sides.

Q. And how far did the water extend?

A. Well, I don't know how far it extend but down past the passageway.

Q. Where was the water? Was it on the mat?

A. It was all over.

Page 6, lines 2 and 3

A. What type of deck?

Q. Yes, sir. What was it made of, the flooring?

Page 6, lines 7 to 12

Q. Was that some form of linoleum or Kentile?

A. Kentile, I think.

Q. Kentile, Now, did the water cover the mat?

A. Yes.

Q. Did the water cover the Kentile?

A. Yes.

Page 7, line 15 to 17

Q. At that particular time what was the condition of the deck?

A. It was wet, water.

Page 9, lines 2, 3 to 17

THE COURT: Represents what?

THE WITNESS: The passageway.

Q. And does it represent the area that you are discussing?

A. Yes, yes, sir, it do.

THE COURT: Is the ice-making machine shown there?

THE WITNESS: Yes, sir

Q. Now, when you were about three feet from the stairway that goes down to the lower deck, what did you see?

A. I saw Mr. Princiotti slip and fall.

Q. And then what did you do?

A. When I was running down where he fallen, I hollered to the watchman, the guard, that a man was hurt.

Q. When you saw him slip and fall, in feet, how many feet away were you from the top of the stairway?

A. I was about three feet away.

Page 13 lines 13 to 20

Q. I show you Plaintiff's exhibit 13 in evidence and ask you

to describe what you see in that photograph.

A. Well, I see this thing about nine inches, a foot high where that step over is I just described, and I see the doorway that leads into the passageway.

Q. I show you Plaintiff's exhibit 7 in evidence and ask you whether that picture represents the rubber mat?

A. Yes.

MR CARR'S CROSS EXAMINATION OF
WILLIAM T. MUSE

Page 23 lines 5 and 6

Q. And you say there was water all over the passageway?

A. Yes

Page 23 lines 14 thru 18

A. I'm supposed to answer that? I say in the statement before that the water was over the passageway, running down past the stairway.

THE COURT: Past the what?

THE WITNESS: Past the stairway.

Page 23 lines 23 thru 25

Q. I show you Plaintiff's exhibit 22. Is that a photograph of the passageway you are talking about?

A. Yes, sir.

Page 24 lines 13 to 25

Q. Where did you see the water when you walked in at this spot?

A. The water was over there by the galley, the water was running all the way across past the stairway?

Q. Do you see a stairway in this photograph?

A. That look like a stairway right there (indicating).

Q. Is that the stairway where the water was running?

A. If that is the stairway, that is the one where the water was running. But that should have been further down because the galley is over here, the ice-making machine is here, then this passageway ----- this stairway was further down.

Q. Well, was there water at the top of this stairway?

A. It had to be because it was all around this side.

Page 28 lines 24 and 25

THE COURT: Mr. Carr, can you move along, please?

MR. CARR: I thought there was a shot here showing the entire length of the passageway, and I was looking for that.

Page 29 lines 4 and 5 and 11 thru 13

Q. Now, would you show us on Plaintiff's exhibit 2 what part of the deck was covered by water?

A. Around the galley. The ice-making machine is at the mouth of the galley, and all around that area, down past the passageway was water.

Page 32 lines 11 to 23

Q. Here is plaintiff's exhibit 1. That is the ice-making machine is that correct?

A. Yes. There the stairway he fell down, right there.

THE COURT: Mark that one "ice-making machine" and "stairway"

Why are we spending so much time on it?

Q. You have placed an "X" on the stairway, right?

A. Yes.

THE COURT: Show it to the jury now so we know what we are talking about, please.

Q. How far was this ice-making machine from the stairway?

A. I don't exactly know.

Page 36 lines 7 to 23

Q. When you went down to the bottom of this stairway to help Mr. Princiotti up, was he conscious or unconscious?

A. Looks to me like he was unconscious.

Q. What does that mean? What does it look like to you?

A. He was laying down in a heap, and we had to lift him up, me and the watchman.

Q. When you lifted him up, what did he do?

A. When we lift him up, he shook his head, looked around and had a red mark on the back of his right ear.

Q. Then what did he do?

A. We brought him up the steps.

Q. Did he walk up the steps?

A. No.

Q. You carried him physically?

A. We hold him and walk up like that.

Q. You assisted him?

A. Yes, me and the watchman.

Page 40 lines 13 thru 18

Q. Did Mr. Weisberg ask you if the machine was always leaking?

A. I don't know.

Q. Did you tell him, "It is always leaking"?

A. I don't know. I didn't know that much about the machine. I know it was leaking then.

CHESTER ROBBINS
WITNESS FOR DEFENSE

Page 306 lines 4 and 5

Q. What did you find when you arrived at the main deck?

A. Mr. Princiotti was standing up against the aft bulkhead in the athwart ship's passageway.

Page 314 lines 22 thru 24

Q. Did you also conduct an inspection of the deck area at the head of the stair wall?

A. Yes.

Page 315 lines 5 thru 10

Q. Was there a floor covering of any kind in that passageway?

A. Yes there was.

Q. What was it?

A. It is all a long mat. I think it is made out of rubber, a long rubber mat.

Page 316 7 to 25

Q. Mr. Robbins, I shall be brief.

Had there been trouble with this ice-making machine prior to May 14, 1972?

A. What do you mean by "trouble"?

Q. Didn't work. When it did work, water would come out.

A. We had trouble where it didn't work but would be shut off.

Nothing where water came out.

Q. I show you this photograph, which is plaintiff's exhibit 3, and ask you whether, throughout any of the times you were on board the vessel, you ever saw the ice-making machine in that condition with the shield off?

A. I possibly had seen it maybe once or twice. Most of the time, the shield was on.

Page 318 lines 3 to 25

Q. Adjacent to the mat, between the edge of the mat and the wall.

A. Let's say a tile floor.

Q. What kind of tile, if you know?

A. I don't know. I imagine a regular floor tile.

Q. You mean like kentile?

A. Like the tile on this type of deck.

Q. I'm not so sure this is tile.

A. Well, I don't know.

Q. You were on the ship for how long?

A. Two years.

Q. What is the effect of water on this particular tile?

A. Other than getting it wet, I don't know.

Q. How about slippery?

A. If you had water on the deck, it would be slippery.

Page 318 lines 22 thru 25

Q. And I show you a photograph in evidence, number 23, and ask you whether there is such a strip running from the mat down to the head of the steps?

A. No. There isn't.

ELI MARVIN WIER, ELECTRICIAN
170 West 74th Street
New York, New York
ENTIRE DEPOSITION EXCLUDED

Pictures marked for Eli Wier were renumbered in Court.

MR. WEISBERG: I contend that the machine was defective for a long period of time before the accident, and what better proof do I get than by the electrician who previously served on board the ship?

THE COURT: How do you prove it is the same machine that was on board the vessel on May 14, 1972?

MR. WEISBERG: Because he testified that when he rejoined the ship after the accident, it was the same machine.

JOSE DUJON DIRECT

Page 440 lines 9 thru 11

Q. Now, are you familiar with the ice-cube machine in this area?

A. Well, there was one right in the passageway there.

Page 440 lines 19 thru 24

Q. Have you ever seen water leaking out of that ice-cube machine?

A. No.

Q. Are you sure of that?

A. No. You got a stopper there that the water comes down and goes inside the stopper which has a cup.

Page 441 lines 12 25

Q. What is the floor made out of in that passageway?

A. It is tile.

Q. Have you ever had to replace any of the tile in that passageway?

A. I never had anything to do with the tiles as far as the tiles is concerned. If there is anything wrong, the engineers see it and they replace it. I think there has been some replaced, but I wasn't there when it was replaced.

Q. Do you know the reason that the tile was replaced?

A. No. I don't know the reason. It was---the bottom was rust and I guess they dig the rust out.

Q. What does the tile sit on, if you know?

A. Steel.

Page 449 lines 4 thru 8

Q. If there is water on this tile, does that make the area slippery?

A. No.

Q. Water on Kentile does not cause slipping?

A. We don't use any wax at all on the floor.

PRINCIOTTI DIRECT

Page 164 lines 12 thru 18

A. This water was coming from the ice-making machine. It was directly straight across from the ice-making machine and water running down along the side. In other words, there is an angle from the machine to the stairway, and it was coming down this side and running along that way. Just a little bit even past the stairway. Just right around by the stairway.

Page 167 lines 15 thru 25

A. I'd say almost the whole length of the passageway up to the washing machine. I noticed the water. I was very careful walking over the mat where the water was. Then I turned to go down the steps. I took one or two steps and that's when I slipped, trying to reach for the

railing, and I fell down.

Q. Was there any rubber mat or any strip of a rubber mat leading from this main runway to the covering on the top of the head of the stairway that leads down to the crew's quarters?

A. No, sir.

Page 168 lines 2 thru 20

Q. Now, was there water on this particular area that you stepped in?

A. Yes. On the Kentile which is between the mat and the first step.

Q. And what happened to you?

A. I took one or two steps up on to this, and I slipped and tumbled down the whole flight of steps.

Q. What is the next thing you remember?

A. The next thing I remember was being helped up the steps.

Q. Do you remember by whom?

A. I remember Mr. Muse.

Q. Anyone else?

A. There was another man I don't remember. I believe he was a guard. I don't remember.

Q. Where did they take you to?

A. I don't remember being seated in the alleyway. The next thing I remember was being in the lounge examined by the purser.

PRINCIOTTI CROSS

> Page 224 lines 20, 21, 22

Q. Now, when you got to the head of that stairway, you turned right?

A. Yes, sir.

Page 225 lines 3 thru 8

Q. And it was at that point when you took this right turn at the head of the stairway that you slipped?

A. Yes, sir.

Q. And you fell down the stairway?

A. Yes, sir. As I fell, I was trying to grab for the handrails and I missed it.

Demands Trial by Jury demand date: 10/9/73

JUDGE WEINER

D. C. Form No. 104 Rev.

TITLE OF CASE

ATTORNEYS

VICTOR O. PRINCIOTTI,

Plaintiff,

-against-

MEDITERRANEAN MARINE LINES INC.,

Defendant.

For plaintiff:

Standard, Weisberg, Heckerling & Rose
38 Park Row, N.Y. 10038
RE-2-9855

Called
2-5

For defendant:

Attr. for Deft. Haight Gardner PC
1 State Street Pl
New York, N.Y. 100
DI-4-6800

STATISTICAL RECORD	COSTS	DATE	NAME OR RECEIPT NO.	REC.
J.S. 5 mailed X	Clerk		<i>[Signature]</i>	
J.S. 6 mailed ✓	Marshal			
Basis of Action: Admiralty	Docket fee			
P.I. Jones Act	Witness fees			
Action arose at:	Depositions	<i>[Signature]</i>		

DATE	PROCEEDINGS	
Oct-9-73	Filed Complaint and issued summons.	
Oct.17-73	Filed Summons and Marshal's return served on Mediterranean Marine Lines Inc. by Weisberg, on 10/1/73	
Nov.7-73	Filed Pltff. Cross Notice that Deft. will be examined before trial on 12/5/73	
Nov.7-73	Filed for Deft. Notice of Examination before Trial, on 12/5/73	
Nov.7-73	Filed for Deft. ANSWER to the complaint	HQD2H
Dec.11-73	Filed defts. interrog. to pltf.	
Dec.13-73	Filed pltffs. interrog. to deft.	
Feb.19-74	Filed pltffs. request upon deft. to permit pltf. to inspect defts. documents, etc.	
Feb.11-74	Filed defts. answer to pltffs. interrog.	
Feb.20-74	Filed pltffs. answer to defts. interrog.	
Oct.24-74	Filed pltffs. pre-trial order. So ordered, Weinfeld, J. (consented to)	
Dec.12-74	Filed pltffs. notice to take deposition of Dr. Rubin Gerber on Jan. 7, 1975.	
Jan.2-75	Filed pltffs. trial memorandum.	
Jan.2-75	Filed pltffs. request s to charge.	
11-20-75	Jury trial begun before Weinfeld, J.	
11-21-75	Trial continued	
11-22-75	Trial continued	
11-22-75	Trial concluded - Jury verdict for the deft.	
11-23-75	Filed judgment and order, adjudged and decreed: that deft mediterranean marine lines, inc. have judgment against the pltf, Victor O. Princiotti, dismissing the complaint.	Clerk
1-24-75	Filed Defendant Trial Memorandum	
1-24-75	Filed Deft. preliminary motion to charge as may be called for by the evidence during the course of the trial.	
02-05-75	Filed bill of cost on judgt. \$ 75,120 in the sum of 649.60	
02-14-75	Filed U.S.D.C. notice of appeal to the Second Circuit from the judgment entered on 2-23-75 in favor of the deft. --copy mail to.	
02-27-75	Filed unsigned order to appeal without prepayment of fee and memo. endorsed on same --28 U.S.C. 1915(a) provides that an appeal in forma pauperis may not be taken if if the trial court certifies in writing that it is not taken in good faith. 28 U.S.C. §753(F) provides that in actions not under the Criminal Justice Act or under 28 U.S.C. §2255, fees for transcripts shall be paid by the United States if the trial judge certifies that the appeal 'is not frivolous (but presents a substantial question). After a thorough review of the trial record, the Court finds no basis upon which within the requirements of the foregoing provision, to grant the motion: accordingly, it is denied --Weinfeld, J. m/n	
03-07-75	Filed notice of appeal to the U.S.C.A. for the Second Circuit from the order dated 2-26-75 denying the motion of pltf for permission to proceed with an appeal with out payment--copy mailed to Haight, Gardner, Poor & Havens, Esqs.	
2-10-75	Filed transcript of proceedings dated Jan. 21, 1975	
	A TRUE COPY	
	RAYMOND M. BURGHARDT, Clerk	
	By <i>[Signature]</i>	

75-8076

GENERAL DOCKET
UNITED STATES COURT OF APPEALS
 FOR THE
 SECOND CIRCUIT

CASE NO.		VICTOR O. PRINCIOTTI V. MEDITERRANEAN MARINE LINES INC.
DATE	FILINGS—PROCEEDINGS	Filed
2-10-75	Filed copies of docket entries and notice of appeal	
3-10-75	Filed motion for leave to proceed in forma pauperis	
3-11-75	Filed record (original papers of district court)	
3-11-75	Victor O. Principiotti filed form C	
3-11-75	Victor O. Principiotti filed form D	
3-11-75	Filed copy of docket entries and notice of appeal	
3-13-75	Filed certificate of service re: forms C and D	
3-28-75	Filed affidavit in opposition to motion for leave to proceed in forma pauperis	
5-15-75	Filed order granting motion for transcription of the minutes at the expense of the United States	
5-19-75	Issued certified copy of order granting motion for transcription of the minutes at U. S. expense to Southern District Court Reporters	
6-14-75	Court reporter filed form D	
7-21-75	Filed motion for leave to extend time to file appellant's briefs	
7-25-75	Filed order granting leave to extend time to file briefs to 9-25-75	
9-25-75	Filed motion for an extension of time to file briefs, appellant, p/s	
9-29-75	Filed order granting extension of time to file appellant's brief and appendix to 11-26-75	

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

VICTOR O. PRINCIOTTI

Plaintiff

-against-

MEDITERRANEAN MARINE LINES, INC.

Defendant

To Haight
Attorney(s) for
Service of a copy of the
Dated

JUDGMENT
75,120

The issues in the above entitled action having been brought on regularly for trial, before the Honorable Edward Weinfeld, United States District Judge, and a jury, and the jury having returned a verdict in favor of the defendant, it is,

ORDERED, ADJUDGED and DECREED: That defendant MEDITERRANEAN MARINE LINES, INC., have judgment against the plaintiff VICTOR O. PRINCIOTTI, dismissing the complaint.

Dated: New York, N.Y.

January 23, 1975

Raymond F. Berghardt
Clerk
MICROFILM

JAN 23 1975

2-5-75- No appearance in opposition. Bill of costs ^{as taxed} in the sum of \$649.60, in favor of defendant and added to the judgment.

Raymond F. Berghardt
Clerk

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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

- - - - -X
VICTOR O. PRINCIOTTI, :
Plaintiff, :
-against- : 73 Civil 4273
(J. Weinfeld)
MEDITERRANEAN MARINE LINES, INC., :
Defendant. :

- - - - -X

Deposition of ELI M. WIER, a witness, taken by
Plaintiff, pursuant to notice dated October 23, 1974,
at the offices of Messrs. Standard, Weisberg,
Heckerling & Rosow, 38 Park Row, New York, New York
10038, commencing at 2:00 o'clock p.m., on Friday,
October 25, 1974, before Thomas W. Murray, a Steno-
type Reporter and Notary Public within and for the
State of New York.

ooOoo

A P P E A R A N C E S:

For the Plaintiff:

MESSRS. STANDARD, WEISBERG, HECKERLING & ROSOW
38 Park Row
New York, New York 10038

BY: ABRAHAM WEISBERG, ESQ., of Counsel

For the Defendant:

MESSRS. HAIGHT, GARDNER, POOR & HAVENS
1 State Street Plaza
New York, New York

BY: STEPHEN K. CARR, ESQ., of Counsel

PRESENT: VICTOR O. PRINCIOTTI
oOo

IT IS HEREBY STIPULATED AND AGREED, by and between
the parties hereto, through their respective counsel,
that the certification and filing of the within examin-
ation and the signing before a notary public shall be and
the same are hereby waived;

IT IS FURTHER STIPULATED AND AGREED that all objec-
tions, except as to the form of the question, shall be
reserved to the time of the trial;

IT IS FURTHER STIPULATED AND AGREED that counsel for
Plaintiff will furnish counsel for Defendant with a copy
of the within examination, without charge.

oOo

1
2 E L I M. W I E R, called as a witness, having been
3 first duly sworn by a notary public of the State of
4 New York, was examined and testified as follows:

5 DIRECT EXAMINATION

6 BY MR. WEISBERG:

7 Q What is your full name and home address?

8 A Eli Marion Wier.

9 Q Your address?

10 A 170 West 74 Street, New York.

11 Q How long have you been living at that address?

12 A Approximately five years.

13 Q What is your occupation?

14 A I'm a seaman.

15 Q What certificates do you hold?

16 A I hold an electrician, junior engineer, fire-
17 man, boiler tender, oiler and pumpman. Also I have a
18 certificate for the steward department. I can work in any
19 capacity in such department.

20 Q Are you a member of the National Maritime Union?

21 A Yes, I am.

22 Q Do you expect to leave the United States by
23 joining a vessel and sailing out?

24 A Yes, I do.

25 MR. CARR: Note my objection to the leading.

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Q Do you have your card in at the National Maritime Union for a job?

A No. I have that with me.

Q Do you expect to get a job shortly?

A Yes, I do.

Q When do you expect to get a job?

A As soon as I can. It could be Monday or any time during next week.

Q That is to be a seaman and to sail?

A As an electrician on board a ship.

Q Did you work as an electrician in the past aboard the SS DEFIANCE?

A Yes, I did, twice; once in 1971 and the other time in 1973.

Q Can you tell me how many voyages you made on the SS DEFIANCE?

A The first time I had two voyages, the second time one.

Q The first time was during what year?

A That was 1971.

Q The first voyage commenced when?

A May 12 and ended June 14.

Q 1971?

A Right.

1

2

Q The second voyage?

3

A Of the same year, June 15 to July 20.

4

Q Did you return again to the vessel in the capacity of electrician?

5

6

A As electrician, right.

7

Q Will you please tell us when?

8

A It was February 23, 1973, and I was discharged from the ship upon completion of the voyage on March 28, 1973.

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11

Q Do you understand that your testimony is being taken today in the event that you are out of the country on a vessel or at a place more than 100 miles from the City of New York so that your testimony may be used upon the trial of this case?

15

16

A I understand that.

17

Q I show you a photograph and ask you to identify the vessel in the photograph.

18

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A The vessel in the photograph is the SS DEFIANCE. It's a container type of ship, roll on and roll off.

20

21

Q Looking at this photograph, will you tell me whether there are any vessel-contained ramps?

22

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A There are vessel-contained ramps on here. One is aft, one is on the port side and the other is on the starboard side.

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2 Q Is this picture a fair and accurate represent-
3 ation of the vessel?

4 A Yes, it is.

5 MR. WEISBERG: I ask that this photograph be
6 marked Plaintiff's Exhibit 1 for Identification.

7 For Mr. Carr, I intend to use the same numbers --

8 MR. CARR: Why don't we just use the same
9 numbers instead of marking it all over again?

10 MR. WEISBERG: I am using the same one.

11 MR. CARR: This has already been marked
12 Plaintiff's Exhibit 1 at a deposition taken by
13 plaintiff on what date?

14 MR. WEISBERG: July 3, 1974.

15 MR. CARR: This is sufficient for our purposes.
16 Let's not mark it again.

17 Q I show you another photograph that has been
18 previously marked Plaintiff's Exhibit 2 back on July 3,
19 1974 on another deposition, and ask you to identify the
20 photograph --

21 MR. CARR: I'm sorry. What was the date you
22 gave for the first one?

23 MR. WEISBERG: Same date, July 3, 1974.

24 Q -- with an explanation with respect to the out-
25 side deck.

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2 A This is the port side of the ship with the gang-
3 way out. It shows over here a doorway into the passage-
4 way on the main deck. From the gangway to the doorway
5 would be approximately 18 to 20 feet.

6 The doorway is in a sheltered position from the
7 elements, outside elements.

8 Q This picture is a fair and accurate represent-
9 ation of this particular portion of the SS DEFIANCE, is
10 it not?

11 A Yes, it is.

12 Q I show you another photograph that has been
13 previously marked as Plaintiff's Exhibit 3 for Identifi-
14 cation and ask you to identify that photograph, telling
15 us what you see in the photograph.

16 A This photograph identifies the starboard side
17 of the ship with watertight doors raised above the
18 deck outside and -- what would you call that section
19 over here? --

20 Q The threshold?

21 A Right, the threshold -- and regular swing-type
22 doors. This is for purposes of weather prevention, also
23 because the ship being completely air-conditioned they
24 have double doors like that.

25 Q You referred to an outside watertight door.

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2 Is that door shown in the photograph?

3 A No, only the frame of it, which is raised
4 above the deck, about 14 inches off the deck. The door
5 swings out, therefore we don't see the door itself,
6 but that's the frame of the watertight door.

7 Q And this is a fair representation of that area
8 of the vessel?

9 A Yes, it is, right.

10 Q I show you a photograph which has previously
11 been marked as Plaintiff's Exhibit 4 for Identification
12 and ask you to examine it, telling me what you see in the
13 photograph.

14 A This is looking from amidship into the starboard
15 side. I am looking over here, the displacement of the
16 mat in the passageway and the mats to the doors. There
17 is a mat leading to the engineroom and there is also a
18 mat leading to the crew messroom, but there is no mat
19 available to the stairway going to the crew's quarters.
20 It's on the starboard dside.

21 It also shows partially the machine, the ice machine,
22 with the drainage and the drain pipe showing there.

23 It also shows over here indications of buckled Ken-
24 tiles.

25 Q This is a fair and accurate representation of
the condition that you see?

1
2 A Right.

3 MR. CARR: The condition that what? I will
4 submit the picture speaks for itself.

5 MR. WEISBERG: The picture speaks for itself.

6 Q Are you familiar with this condition of this
7 particular passageway?

8 A Yes, I am, very much.

9 Q You have been on this passageway how many times
10 during your employment of more than 100 days?

11 A Quite a few thousand times.

12 Q I show you a photograph that has previously
13 been marked Plaintiff's Exhibit #8 for Identification
14 and ask you to identify the object in it and give me your
15 explanation of what existed with respect to that object
16 and, in addition, what you see.

17 A This is the ice-making machine on board that
18 vessel. This machine, the ice-making equipment and
19 everything else, is exposed, it is not covered. It shows
20 the machine in a condition that I remember seeing it
21 almost all the time on board the ship.

22 Q Was that in 1971?

23 A 1971. Also I seen the same condition in 1973
24 when I was aboard it.

25 Q What do you see with respect to the bottom part

1
2 of the ice-making machine?

3 A The frame the machine is staying on is rusted,
4 corroded and in bad shape.

5 Q What do you see with respect to the drain pipe
6 and the drain?

7 A The drain pipe is raised above the drain a few
8 inches. The drain itself looks like it is in bad con-
9 dition in and outside.

10 MR. CARR: I will object to what it looks like.

11 The picture speaks for itself.

12 Q I show you another photograph that is marked
13 Plaintiff's Exhibit 12 and ask you to identify the object
14 in the picture and tell me about the condition that ex-
15 isted back in 1971 when you were on board the ship.

16 A This is the ice-making machine --

17 MR. CARR: Let me say at this point that I am
18 going to object to the testimony that has been given
19 thus far and any testimony that is going to be given
20 from now on with respect to the condition of the ice
21 machine other than in 1972.

22 Q Go ahead. You may answer.

23 A This ice machine is showed over here and it
24 shows the rusted-away frame that the machine stays on.
25 It shows the drain pipe as I seen it in 1971 and it shows

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2 over here the mat which is gray color, leading to the
3 galley, and goes underneath the mat that goes across the
4 passageway.

5 Q With respect to the gray colored mat that is
6 situated in the picture in front of the ice-making machine
7 and that runs under the dark rubber mat --

8 A Which is going across --

9 Q -- which is going across the passageway, will
10 you tell me what is the significance of that, what has
11 occurred with respect to that while you were on board the
12 ship in 1971, as well as what has occurred back in 1973
13 when you were on board the ship?

14 MR. CARR: Same objection.

15 A When I was on the ship in 1971 there was leak-
16 age on the spill-over from the drain. The water would go
17 under the mat and go across to the other side of the black
18 mat.

19 Q I show you a photograph marked Plaintiff's
20 Exhibit 11 for Identification and ask you to identify
21 that photograph and give me your viewpoints on it with
22 respect to what you see and advise me whether that condi-
23 tion existed in 1971 as well as in 1973.

24 A What I see over here is the drain pipe and the
25 drain, and also buckled Kentiles. This buckling of

Kentiles would only result from water --

MR. CARR: Objection as to opinion.

A Drain pipe shows it's way above the drain and the drain itself is with the water outside because of the rust and the condition it is in.

Q Have you had any experience with respect to Kentiles that buckled as to the cause thereof?

MR. CARR: Objection.

A Yes, I did.

Q Tell us about it.

A It was in a mess room we had a problem where the water came out from the coffee maker and the Kentiles started buckling up. We had to remove it and change it. That was the deck department that did the job. The boat-swain was in charge of that.

Q I show you a photograph that has been previously marked Plaintiff's Exhibit 10 for Identification back on July 3 of 1974 and ask you to identify the object. Will you please tell me what you see in that photograph?

A In the photograph I see the lower part of the ice maker, the drain pipe from the ice maker and the drain itself; Kentiles shown buckled over here, and a partial showing of this rubber mat that goes across the passageway.

It also shows the bottom of this ice maker, rusted
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2 and in very bad condition.

3 MR. CARR: Objection to the characterization.

4 Q Did you see that condition when you served
5 aboard the vessel for two voyages back in May, June and
6 into July, 1971?

7 A Yes, I did.

8 Q Was that the same condition?

9 A Maybe it wasn't that same exact condition but
10 it was bad condition also.

11 Q Did you also see that condition in 1973 when
12 you worked aboard the vessel in February and in March?

13 A Yes, I did.

14 Q I show you a photograph that has not as yet
15 been marked for identification and ask you to identify it
16 and explain it to us.

17 A This shows partially the face of the machine
18 itself, --

19 MR. CARR: Has this been marked?

20 MR. WEISBERG: No, never.

21 A -- with one side of the bin open, and it shows
22 over here the place where the harvester of ice cubes is.
23 It's behind the container, container tins, and behind
24 that you have a plastic make-shift to prevent water
25 splashing out of the machine while the harvest is in

1
2 progress.

3 Q When you use the word harvest what do you mean?

4 A Harvest is when the ice is ready to be dis-
5 charged into the bin, so you have a certain process that
6 goes through. Every 20 minutes you have the harvest of
7 the ice that is made and it goes into the bin.

8 Q The plastic type of covering, as indicated or
9 shown in the photograph, is that regular ice-making
10 machine equipment?

11 A I Don't believe so. This looks like makeshift
12 retaining plastic.

13 Q Can you tell me whether this makeshift type of
14 equipment was on this ice-making machine of the SS DEFIANCE
15 when you were on the vessel in 1971?

16 A When I was in 1971 there was just a plastic
17 cover that was like a plastic bag or something like that,
18 something that was done for immediate use. In 1973 I seen
19 something familiar to this.

20 Q When you were on the vessel in 1973 was that
21 makeshift cover attached to the ice-making machine?

22 A Right. This kind I seen.

23 Q Is this photograph a fair representation of
24 the condition that existed on the ice-making machine when
25 you were on the vessel in 1973?

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2 A It is, right.

3 MR. WEISBERG: I ask that this be marked as
4 Plaintiff's Exhibit A for Identification.

5 (A photograph marked Plaintiff's Exhibit A
6 for Identification, as of this date.)

7 Q I show you another photograph that has not as
8 yet been marked for identification and ask you to describe
9 it and identify it.

10 A This is almost the same kind of photograph as
11 the other one --

12 MR. CARR: As what other one?

13 MR. WEISBERG: As Plaintiff's Exhibit A for
14 Identification.

15 A -- except it shows a closer proximity of the
16 harvesting section and partially the compressor machinery
17 over here of the machine itself.

18 Q To your knowledge, is that standard equipment
19 for an ice-making machine?

20 A The plastic, I don't believe it is. This is
21 to retain the water while the harvest is in the process,
22 to hold the water from splashing outside of the machine.

23 Q Do you recall seeing that condition when you
24 were on board the vessel in 1973?

25 A In 1973 I see it in almost the same condition.

Q Is this a fair representation of the condition that you saw when you were on board the vessel during your employment in 1973?

A It is.

MR. WEISBERG: I ask that this be marked as Plaintiff's Exhibit B for Identification.

(A photograph marked Plaintiff's Exhibit B for Identification, as of this date.)

Q When you served as an electrician aboard the SS DEFIANCE in 1971 was there any difficulty with this particular ice-making machine?

A The machine the first time was in repair. Finally when it was repaired there was evidence of leaking almost every day, someone had to come down and mop it up around the machine.

Q Whose job is it on board the vessel to take care of the ice-making machine?

A The engine department. The responsibility would be either the first assistant or chief engineer. If the ship carries a different engineer, that's the man who would take care of it.

Q I show you another photograph that has not been identified as yet and I ask you if you can identify the photograph and describe it, please.

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A This is starboard after section of the passage-
way. It shows the chief steward's room and entrance to
the passageway -- to the stairway leading to the crew
quarters. At the entranceway leading to the crew quarters
there are two things that have significance.

MR. CARR: I am going to object to what is sig-
nificant and what is not significant. All you have
to do is describe the picture.

Q Instead of using the word significant, just tell
us what is there and what isn't there.

MR. CARR: The picture speaks for itself and be-
yond that the witness need not testify.

MR. WEISBERG: You may answer. Mr. Carr has an
objection.

A There is no mat leading to the stairway from the
center mat of the passageway. The railings along the
stairways are recessed back. That means coming into the
stairway you almost have to lean before you can get to the
rails.

MR. CARR: Again, is this supposed to be opinion
testimony or is this factual?

MR. WEISBERG: I am going to qualify him as an
expert.

MR. CARR: In what?

MR. WEISBERG: With respect to construction and custom and practice on board other vessels.

MR. CARR: Are you going to qualify him as a safety expert?

MR. WEISBERG: I will do my best.

Q How many years have you been going to sea, Mr. Wier?

A A little bit more than 13 years.

Q Have you been sailing fairly constantly?

A Right.

Q You have sailed in what capacity?

A Most of the time I have been sailing as a chief electrician.

Q How many vessels, more or less, have you sailed on?

A All told?

Q If you can.

A A hundred or more. I'm not sure.

Q You have made approximately how many voyages over the period of 13 years?

A This I cannot say.

Q Are you familiar with the custom and practice and conditions that existed on other vessels with respect to handrails used down stairways?

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A. Yes, I do.

Q. What can you say with respect to that?

A. On some ships they have signs --

MR. CARR: No. I think the question was, Mr. Witness, do you know the custom and the practice. Do you know the custom and the practice in the industry?

THE WITNESS: I understand that. Sometimes it corrected later on in safety meetings.

MR. CARR: I am going to object to any testimony given along these lines because I don't think there is a proper foundation.

Q. Whether it is or not, that's up to the judge to decide. I am interested in your opinion from your experience what has occurred on other ships with respect to similar conditions as you see in this photograph which I am going to ask at this time to be marked as Plaintiff's Exhibit C for Identification.

(A photograph marked Plaintiff's Exhibit C for Identification, as of this date.)

Q. Will you please tell us if conditions similar to what you see in Plaintiff's Exhibit C for Identification existed and what, if anything, was done to remedy or rectify or change that condition?

MR. CARR: With respect to what?

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2 MR. WEISBERG: With respect to the position of
3 the handrails on a stairway.

4 MR. CARR: Can we hold on just a minute?

5 I am going to object to any testimony with re-
6 spect to handrails because, although I don't have the
7 pretrial order in front of me, it is my recollection
8 that there has been no allegation that the handrails
9 are involved in this claim for unseaworthiness.

10 If you have the pretrial order in front of you
11 and can correct me I will be glad to acknowledge that.

12 MR. WEISBERG: I believe there has been testi-
13 mony --

14 MR. CARR: No. I am referring to the pretrial
15 order, whether there is any reference in the pretrial
16 order to the positioning of the handrails on the
17 SS DEFIANCE.

18 MR. WEISBERG: There may not be exactly on that
19 point, but there is enough phraseology to indicate
20 that the plaintiff was not furnished with a good, safe
21 and proper place in which to walk. I contend that
22 this is all part of that situation. It is up to the
23 judge to rule.

24 MR. CARR: I understand that. I am just making
25 a record.

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2 MR. WEISBERG: You may.

3 MR. CARR: As I understand what you have just
4 told me, there is no reference either in the pretrial
5 order or in plaintiff's answers to defendant's inter-
6 rogatories concerning a handrail.

7 MR. WEISBERG: I don't agree with your conclusion.

8 MR. CARR: It is not a conclusion. I am looking
9 for the word "handrail" anywhere in the answers to
10 interrogatories or in the pretrial order.

11 Would you kindly note at this time Mr.
12 Princioti's presence in the room.

13 For the record, Mr. Weisberg I believe is re-
14 viewing the pretrial order.

15 MR. WEISBERG: No, I am reviewing the answers.

16 MR. CARR: Plaintiff's answers to defendant's
17 interrogatories.

18 MR. WEISBERG: Yes. And the very first sentence
19 I contend comes within the category of a good, safe
20 and proper place in which to walk.

21 MR. CARR: Are we both agreed, however, that the
22 word "handrail" is not mentioned in number 1, number 2
23 or number 3?

24 MR. WEISBERG: The word "handrail" is not men-
25 tioned.

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Q May we have your answer, Mr. Wier?

A Pertaining to the handrails?

Q Yes, sir.

A You asked me in reference to other ships that I have been on. Most of the ships I have been on when the handrails are there they are usually in such a way that you have a continuation running from passageways going down-stairs, upstairs, wherever.

Over here, I see the handrail, you have quite a distance from the corner entrance to the stairway before you have the handrail.

In the case over here, on the ship DEFIANCE, the stairways are pretty steep; you almost have to use the handrails all the time going down to the crew quarters.

Q I show you another photograph that has been marked Defendant's Exhibit E for Identification, and may I have your thoughts on that particular photograph?

MR. CARR: I will object to the form of the question.

A This is the passageway looking from amidships.

Q Do you recognize the photograph?

A Yes, I do.

Q You are familiar with the area?

A Yes.

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Q Tell us what you see.

A This is looking from amidship to the doorway from outside, which is looking to the starboard side.

I see rubber matting in the middle of the passageway, the matting going into the engine room and rubber matting going into the crew mess room.

I see an absence of matting going to the stairway on the starboard side of the crew quarters. I also see a partial side of the ice-making machine.

Q Can you tell me what the custom and practice is with respect to rubber matting --

MR. CARR: Did you say Plaintiff's E before?

MR. WEISBERG: No, I said Defendant's E.

MR. CARR: Defendant's E at the July deposition, right?

MR. WEISBERG: That's right.

Q -- at an area leading to a stairway on board other vessels?

MR. CARR: Same objection.

MR. WEISBERG: Go ahead.

A Most of the times I have been on vessels where matting is just about the size of the passageway itself. There are only maybe two or three inches from bulkhead to bulkhead.

On the DEFIANCE the matting was amidship and there was a lot of space on both sides.

Q What has your experience been with respect to water on Kentile, particularly Kentile in this particular passageway, predicated on your experience?

A This would be very slippery.

Q I show you another photograph which has previously been marked Plaintiff's Exhibit 9 for Identification and ask you to identify it.

A This is the ice-making machine with the face open into the machinery. It shows over here the plastic container right above where the harvesting of ice is.

Q On the 100 days that you were on this particular vessel can you tell me whether or not the cover was on for that period of time? If not, why not and, if not, how long was it on?

A In 1973 I seen the machine being covered properly with a regular metal type cover in that particular section of the machine, but most times when I was aboard the ship the machine was open in this stage and a couple of times I even seen this part was removed.

Q Referring to what, the right panel?

A Right panel. No, no, looking towards the machine it would be the right panel, right.

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Q Right upper panel?

A Right upper panel.

Q Why was the machine cover not on the machine back in 1971?

A Because somebody constantly was working on it, making repairs and corrections.

MR. CARR: Do you want to read the full answer back to me, please.

(Whereupon, the answer was read by the reporter.)

MR. CARR: I will object to the answer as not being responsive.

Q Let me ask you concerning 1971 when you made two voyages aboard the SS DEFIANCE for a period of 68 days. What did you tell me with respect to the metal panel covering the top part of the ice-making machine, being on or off, et cetera?

A Being all the time off in 1971.

Q The reason for it?

A Because there was constantly somebody repairing this machine, working on it or adjusting it.

Q I show you a photograph that has been previously marked Plaintiff's Exhibit 6 for Identification and ask you to identify the picture.

A This is showing partial view of the passageway,

entrance to the engine room, entrance to the stairway on the starboard side to the crew quarters. It shows partially the ice-making machine also.

Q At all the times you were on the vessel was there ever any mat at the head of this stairway or any rubber matting leading from the twelfth passageway step to the top step of the stairway?

A No, I don't remember seeing any mat there.

Q I show you Plaintiff's Exhibit 5 that has been previously marked for identification back on July 3d of 194 and ask you to identify it, and what do you see in that picture?

A This is looking at the passageway towards port side of the ship. I see over here the mat, central mat in the middle of the passageway -- it shows a partial section of entrance to the stairway leading to the crew quarters on the starboard side.

Q Is this passageway tilted in any manner?

A Yes, it is.

Q In which direction?

A On the midship of the passageway it is tilted both ways, downwards, port and starboard.

Q Can you tell me the distance from the ice-making machine to the head of the stairway going down to the

1
2 crew's quarters?

3 A I believe approximately eight feet.

4 Q Do you know the width of this particular pas-
5 sageway?

6 A Forty-two inches.

7 Q I show you a photograph that has been previously
8 marked Plaintiff's Exhibit 13 for Identification and ask
9 you to identify it and tell me what you see in that photo-
10 graph and whether that condition existed back in 1971 when
11 you were on the vessel.

12 A This is looking from the starboard side entrance
13 into the passageway. I see a partial -- partially see the
14 entrance to the stairway to the crew quarters on the star-
15 board side, also the entrance to the galleyway where the
16 ice-making machine is located.

17 This picture over here shows the buckling of Kentiles
18 which was evident in 1971.

19 Q I show you a photograph and ask you to identify
20 it.

21 A This over here is the picture of a water hydrant
22 which is located across from the ice-making machine. It
23 shows partially rubber matting across the passageway and
24 a gray-colored rubber matting from the galley. It shows
25 also the water fountain which is located almost amidships.

Q. Will you explain the significance of this gray rubber matting, why was it placed down?

A. This rubber matting over here is placed because many times when I was in the ship there was water around the machine, around this section. This particular section is pretty well traveled by the crew members going to the galley, in and out of the galley, or going into the storage room which is the old linen closet across from the machine, or coming out to the machine itself for picking up the ice.

Q. Is this a fair representation of the area?

A. Yes, it is.

MR. WEINBERG: I ask that this be marked Plaintiff's Exhibit D for Identification.

(A photograph marked Plaintiff's Exhibit D for Identification, as of this date.)

Q. I show you another photograph and ask you to identify it, showing you photograph Defendant's Exhibit A previously marked for identification on July 3, 1974.

A. This photograph shows the ice-making machine properly covered up and showing the upper section of it with ice being -- the intersection is where before it was exposed, the harvesting section of the machine itself.

Q. I show you another photograph that has not as yet been marked for identification and ask you to identify

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2 it.

3 A This shows left side of the middle part of the ice
4 machine, the covers. It shows the cover over here has
5 improper fitting.

6 Q Is this photograph a fair and accurate repre-
7 sentation of the condition that existed both in 1971 and in
8 1973 with respect to the cover?

9 A In 1971 I couldn't tell because I didn't see
10 this cover on that machine. In 1973 I seen it. It is a
11 pretty good representation of it.

12 MR. WEISBERG: I ask that this be marked as
13 Plaintiff's Exhibit E for Identification.

14 (A photograph marked Plaintiff's Exhibit E for
15 Identification, as of this date.)

16 Q Would you know whether, in addition to the
17 engineers who did some work on the machine back in 1971,
18 whether any outside organization or company did any work
19 on this ice-making machine?

20 A Yes. In 1971 when I came on aboard the ship
21 the machine was in a dismembered position. That means
22 water was removed and something else, I don't remember
23 exactly what parts, but I know the motor was removed that
24 time for repairs.

25 Q Have you been on other ships where they had

1
2 ice-making machines?

3 A Yes.

4 Q What is the difference between ice-making machines
5 on the other vessels and this particular ice-making machine?

6 A On other vessels they had machines that were more
7 efficient in the operation itself. They are usually lo-
8 cated in different places.

9 Q In order for the machine to operate properly,
10 what can you tell us with respect to the position or bal-
11 ance of the machine?

12 A It depends on the machine. Some machines
13 don't require to be completely balanced and they would do
14 almost 100% efficiency making ice. But some, and espec-
15 ially this kind of machine which I am referring to on the
16 DEFIANCE, is the type that requires to be balanced properly
17 because of the nature of the way the machine is built up
18 to make ice.

19 If there is no balance, this machine will not do a
20 hundred per cent efficient work.

21 Q What happens in the situation where the vessel
22 rolls, what happens to the ice-making machine?

23 A When the vessel rolls you have efficiency
24 diminishes in making the ice, therefore when there is
25 less ice going into the bin and you have a sloshing -- we

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2 have water coming in from overflow and going into the ice
3 bin and starts sloshing around, then you have faster melt-
4 ing of ice and also heavier overflow from the machine it-
5 self.

6 Q What happens when the vessel is loaded? When
7 the vessel is taking the containers aboard what happens
8 to the balance of the machine?

9 A When the vessel is loading or unloading it usual-
10 ly tends to tilt either to port or starboard, and some-
11 time forward or aft. If it is unloaded you will come up
12 from the water, one end of it, and therefore you have no
13 balance. The same thing in unloading. Let's say they un-
14 load sometime from the starboard and it will tilt.

15 Q What is that effect on the ice-making machine?

16 A It will affect definitely, especially o this
17 type of machine.

18 Q From what you have seen back in 1971, what you
19 have seen on the pictures, with respect to the overflow
20 drain, is that overflow drain in the same condition as
21 indicated in the pictures as it was back in 1971, as well
22 as in 1973?

23 The overflow drain was about the same condition.
24 Not only that, but sometime the drain itself has trash in
25 it which would prevent water going down the drain properly.

MR. CARR: Objection.

Q In the photograph that has been marked Plaintiff's Exhibit 10 for Identification, I show you that photograph and ask you if you can tell me the distance between the end of this overflow drain to the drain receptacle.

A I would say about three to four inches.

Q In addition, on other vessels how do they work this overflow drain? Do they keep it in the same position or in another position?

A On the other vessels that I am familiar with they have this overflow pipe going into the drain itself in such a way that when the water comes in it goes right directly into the drain pipe itself.

Q In addition, can you, by looking at the photograph, as well as from your recollection of what occurred back in 1971 and 1973, can you tell me whether this overflow drain is centered in the center of that receptacle?

A No, it isn't.

MR. CARR: It isn't from your experience or it isn't from the photograph?

THE WITNESS: I remember seeing it because I seen water overflowing on this particular ship from that drain.

Q Were there any provisions in the legs of the machine to adjust the levelness of the ice-making machine?

A There is none because it's a platform built and the machine is put upon that.

MR. WEISBERG: Your witness.

CROSS-EXAMINATION

BY MR. CARR:

Q What kind of machine was this?

A That's the machine that is built with a tray --

Q No, no. Who made this machine? Who designed this machine?

A I don't remember the name of the machine.

Q Could you describe the machine? What is it called?

A It's an ice-making machine.

Q When you say "ice" are you referring to cubed ice?

A Right, cubed ice.

Q Not cakes of ice?

A No, it's cube ice.

Q It makes cubed ice?

A Right.

Q That is for pitchers and things like that?

A Right.

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Q The men who use that machine would be who?

A It would be the steward department mostly, the mess men.

Q Crew mess men?

A Crew mess men, saloon mess men, also the crew itself. Sometimes they want to go get ice for any use of their quarters so they go and get it.

Q So it is available to anybody who wants to use it?

A Yes, it is.

Q But the people who get the most use out of it are the mess men and the saloon mess men?

A Yes, that's for ice teas and ice waters to serve in the morning, noon and evening.

Q Ice is put in the pitchers at every meal?

A Most of the time, yes.

Q Was this machine functioning better in 1971 in your opinion or better in 1973?

A Better in 1973, as a function itself, to make ice.

Q Does that mean there was less work done on the machine in 1973 than in '71?

MR. WEISBERG: I object to the form of the question.

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A. I can't say whether less or more.

Q From your observation did you see more work being done?

A Improvemet; I seen improvement in the making of ice.

Q From the first time you were on the ship in 1971 until 1973 when you got back?

A Right.

Q You don't know when that improvement was made, do you?

A No.

Q You don't know what work was done on this machine from July 20, 1971 until you rejoined the ship almost two years later; is that correct?

A No, I don't know.

Q You have no way of knowing how the machine was operating in 1972, do you?

A No.

Q Do you know Mr. Princiotti?

A Now I know him, yes.

Q When is the first time you met him?

A I met him in a union hall.

Q How long ago?

A Almost a year now.

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Q About a year ago?

A Right.

Q What was he doing there?

A He was coming down over there and visit some friends of his. I met him through a mutual friend of ours.

Q Who was that?

A Mr. Gaston Guion.

Q How long have you known Gaston?

A About three years, maybe more.

Q How long has Mr. Princiotti known him?

A I don't know.

Q Mr. Gaston --

A Is an ex-seaman, a retired seaman.

Q Did he arrange the meeting between you and Mr. Princiotti?

A No.

Q As an electrician did you ever perform any work on this machine?

A I was asked to check out a couple of times electrical on the machine. I had to check out the timer and the other electric stuff in the machine.

Q Tell me what you checked out on the machine.

A The timer.

Q When was that, your first time aboard or your

1
2 second time aboard?

3 A It would be on the second trip.

4 Q On the second trip in 1971?

5 A 1971, right.

6 Q What did you check out with respect to the
7 time mechanism?

8 A I had to make a setting on it, the time of har-
9 vesting setting. I think I changed it from 7 minutes to
10 5 minutes, something like that.

11 Q Did this have anything to do with malfunctioning
12 of the machine?

13 A Not necessarily.

14 Q Your checking the time, did that have anything to
15 do with the machine malfunctioning?

16 A In a way it did. If the time is too short for
17 harvesting it will retain the ice into the cube recepta-
18 cles instead of completing the harvest. When it goes back
19 into the cycle you still have cubes in some of the recep-
20 tacles, so by changing the time you are allowed to drop
21 the whole entire harvest for a new cycle.

22 Q This was designed to increase the efficiency of
23 the machine?

24 A Right. There is coils where you can control this
25 machine, better efficiency, shorter timing or longer timing.

1
2 It's done periodically, especially when we have water
3 changes.

4 Q Did you perform any repairs on the machine?

5 A Not in itself, not removal or anything else,
6 just mostly adjustment.

7 Q Would it be the electrician's job to work on any
8 repairs that the machine needed?

9 A Yes, if it's electrical. Even if it's going on
10 the whole entire machine itself, sometimes, if I am asked
11 to do that and it's not electrical, then I am paid overtime
12 to do the job.

13 Q Paid overtime for what job?

14 A For repairs. Say it broke down completely
15 and you had to change something; if everybody else was
16 busy they might ask me to do the job. Then I would get
17 overtime, if it's not electric.

18 Q But the only electrical work you did on the
19 machine in 1971 was to adjust the timing?

20 A Right. And I also adjusted the water.

21 Q These are periodic maintenance jobs that are
22 done routinely?

23 A Right.

24 Q Did you perform any overtime work on this ma-
25 chine?

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A No.

Q If you had done overtime work on the machine you would have been doing something in a non-electrical kind of repair?

A Right. When I do overtime on a machine like that that means it's not only the problem with the electrical but also it might be a problem connected with the freon, the compressor and things like that. Sometimes not even that. We might have a problem for water filters in the piping going into the machine might be clogged up, so I would have to remove that, clean it up and put it back in. This would consist of overtime for me.

Q Did you perform any such repair work while you were on the ship?

A Not on this machine.

Q If the water comes out of this machine where does it come from?

A Usually you have water coming out of the machine, from this machine, going from overflow, but many times I seen water coming out where the face was open where the harvesting was. That only would come out from that section of the machine when a harvest is in progress.

Q You say there are two ways for water to come out of the machine that you have seen?

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A. Right.

Q. That is through the drain pipe on the bottom
which is what you called the overflow?

A. Right.

Q. And through the top when --

A. When the face of the machine is open.

Q. When the face of the machine is open?

A. Right.

Q. You said in 1973 the top was properly closed; is
that right?

A. Only for a short time. I remember for about one
week or so, that's all.

Q. Is that what you told us before?

A. No, I said in 1973 that I seen it being closed --

Q. Yes.

A. -- but I didn't tell you the specific time,
because in 1973 I also seen this machine being opened.

Q. Did you ever perform any work on this overflow line?

A. No.

Q. That you see in Plaintiff's Exhibit 11?

A. No.

Q. Was this passageway ever washed down?

A. Yes, it is.

Q. How often?

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2 A I never seen it done when we were in port, but
3 at sea it's washed every morning, mopped down.

4 Q By whom?

5 A I don't remember who was the person from the deck
6 or steward department.

7 Q You don't know whether it was deck or steward
8 department?

9 A I don't remember, but I remember it was done al-
10 most every morning, but only at sea. When in port it's
11 left alone.

12 Q Was this black mat down at sea?

13 A No, at sea they take that black mat out.

14 Q So at sea there are no mats at all in this pas-
15 sagemway; is that correct?

16 A Sometime it is.

17 Q When?

18 A Sometime I seen it, sometime I didn't see it.

19 Q Under what conditions would it be put down at
20 sea?

21 A I can't say that any particular condition would
22 require it.

23 Q Did you ever see the black mat put down at sea
24 when there was bad weather out, when the decks were wet
25 outside?

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2 A Not in that respect. I seen black mats sometime
3 between the ports, that we are going from one port to an-
4 other and it's never been removed.

5 Q Is it fair to say that the black mat is general-
6 ly used when the ship is in port?

7 A Generally, right, that's fair.

8 Q So when the ship is at sea there is no mat or
9 protective coating on top of the Kentile whatsoever?

10 MR. WEISBERG: That isn't what the witness has
11 indicated. He has previously answered to your ques-
12 tion --

13 A No. Sometime at sea you have no mat and some-
14 time you have it. Whether it's intentional or uninten-
15 tional I do not know.

16 Q Is it fair to say that most of the time when the
17 ship is at sea there is no black mat in this passageway?

18 A Right.

19 Q You mentioned that this passageway is tilted.

20 A Yes.

21 Q The tilt that you referred to is a tilt that
22 runs down from the center line of the ship to either side,
23 right?

24 A Right.

25 Q How about the tilt in the other direction, from

1
2 fore to aft?

3 A If there is any tilt then it's not visible to
4 the naked eye.

5 Q Take a look at this photograph here, and I am
6 referring to Plaintiff's Exhibit 4. Is there any tilt to
7 that deck forward to aft?

8 A I don't think there is.

9 Q You don't think so?

10 A I don't think so. If there is it's not as much
11 that you can notice right away.

12 Q If there is, which way is it tilted?

13 A If it is it would be tilted from forward, aft.

14 Q It would be tilted from --

15 A Forward section.

16 Q In other words, the side of the passageway where
17 the ice machine is located would be higher than the side of
18 the passageway where the stairway is located down to the
19 crew quarters; is that what you are telling me?

20 A Yes, but I would say this way: It is only be-
21 cause of the ship's position. That means the deck in this
22 respect still could be flat, but if you are loading in
23 such a way, that means that the forward end of the ship is
24 up, the tilt will be down, aft.

25 Q I am not following you.

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The house on this ship is located aft, is it not?

A Right.

Q Most of your containers are stowed forward of the ship?

A Right.

Q So the more containers you put on the forward end of the ship the lower the forward end of the ship goes into the water; is that correct?

A Right.

Q And the higher the stern comes out of the water?

A Right.

Q Is it your testimony that the passageway tilts down towards the rear end of the ship?

A Right. It is my testimony that this would happen all the time. The only time it would happen, if you have an overload and you have the bow completely down, that means even keel, then you will have it even, but this is very seldom done. You have to load it up to the safety line of the ship, otherwise it will always be tilted aft.

Q You testified before about the positioning of the handrails; is that correct?

A Right.

Q Based on your experience?

A Right.

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Q What is the last ship you sailed on?

A The last ship I was on was MORMACVEGA.

Q When did you get off the MORMACVEGA?

A I got off MORMACVEGA August 29, 1974.

Q You have been on the beach now for two months?

A Almost two months, right.

Q You are registered at the union hall?

A Yes, I am.

Q When did you register?

A As soon as I came off the ship, and I got my
old card.

Q Does that mean you are pretty high on the list
now for a chief electrician's job?

A Yes, I am, right.

Q You said that the Kentile was buckled. Was that
the condition of the tile in 1971?

A Yes, sir -- maybe not the exact same way but
it was always buckled. I seen it in these passageways.

Q Was the tile buckled when you came aboard the
ship?

A Sure, the tiles were buckled.

Q You don't know when that buckling took place,
do you?

A No.

Q Do you know who owned this ship before American Export or Mediterranean Marine Lines?

A Yes, I do.

Q Who?

A MacCormack Lines.

Q The company you just left?

A Yes.

Q Did you ever sail on this ship when it was owned by Moore-McCormack Lines?

A Never.

Q What was the age of this ship?

A When I came aboard the first time I think it was about three and a half, four years.

Q Three and a half, four years old?

A Yes, right, in 1971.

Q You say this machine differs from other machines that you have seen?

A Seen on the other ships, right.

Q Would you tell me again in what respect it differs? First of all, does it differ as to the manufacturer, if you know?

A Yes, that's true too. The manufacturer --

Q Do you know who this manufacturer was on the DEFIANCER?

1
2 A No, but I know in this respect that you have
3 different manufacturers making different machines and you
4 will find almost all of those different manufacturers on
5 different ships.

6 Q You find a whole variety of different kinds of
7 ice machines on the ships?

8 A Right.

9 Q Do they all have these overflow lines?

10 A Yes.

11 Q Is that a safety feature?

12 A That's a standard.

13 Q A standard feature?

14 A Right.

15 Q It's not a safety feature?

16 A They have to have overflow lines because there
17 is a certain amount of water coming out from the bins and
18 a certain amount of water coming out from overflow tanks,
19 so it is necessary to have those.

20 Q You have those on all machines; is that right?

21 A On all machines that I seen on board the ships.

22 Q You say those lines are designed to carry off the
23 excess water --

24 A Right.

25 Q -- that invariably takes place when the harvesting

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is taking place?

A Not necessarily, because if there is a faster setting in the machine you will still have overflow in the pipes.

Q But in every machine you have some overflow no matter how efficient it is; is that correct?

A Right.

Q So even in the machines that you say were a hundred per cent efficient you had some overflow?

A Yes.

Q You say the difference between the overflow pipes you had seen on other ships and the overflow pipe on the DEFIANCE was what?

A Is that the pipe most of the time is built in -- instead of being on top of the overflow or the drain, deck drain, it sometime is built into the pipe itself, because the drain pipe would be bigger and the overflow pipe from the machine itself is smaller, so to prevent spillage they usually make a bigger hole and put this drain inside the drain itself where it prevents it from overflowing on to the deck.

Q Is the reason, if you know, that the overflow pipe is built above the drain pipe in the deck so that you can get access to the drain pipe if it clogs up?

A That's true, but also in the ones I know of you

1
2 have access to it because you have draining in overflow,
3 the drains, and you can lift it up, that grating, and
4 clean it up.

5 Q Even if the pipe is right smack on top of it?

6 A Right. In most of the cases you just slide it
7 along the pipe and get into it without any problem.

8 If there is a problem where you have to go through
9 the pipe, I have seen cases where we have to cut the pipe
10 off, do the job, and then put another piece of pipe in
11 there.

12 Q That's a lot more work involved?

13 A It is, but it's done.

14 Q In this photograph that we have been looking at,
15 Plaintiff's Exhibit 4, you see a mat leading to the en-
16 gine room.

17 A Right.

18 Q What is the reason for a mat leading to the en-
19 gine room? Is that a safety precaution?

20 A I would say it is.

21 Q Why to the engine room as opposed to the chief
22 steward's room?

23 A Because when you go into the engine room you
24 are stepping into the gratings, in a fiddley. The
25 gratings go around and when you are stepping over the

threshold you have to have some kind of protection going to the door.

Q Because of the gratings inside in the engine room?

A Well, gratings -- the situation of the inside fiddley depends how it is. I would say this is a safety feature.

You also have one mat leading to the crew mess room.

Q What is the reason for that?

A Safety feature.

Q Why to the crew mess room do you have a mat?
What is there about the crew mess room that would require a mat?

A It is the same thing, for safety feature.

Q Are there gratings inside the crew mess room?

A No.

Q Are meals served inside the crew mess room?

A Right.

Q Are liquids served inside the crew mess room?

A Right.

Q Occasionally do you find spillage of those liquids in the crew mess room?

A Right. When there is a spilling in the crew mess room right away somebody mops it up.

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Q Are you talking about the DEFIANCE now?

3

A On any ship.

4

Q Let's talk about the DEFIANCE.

5

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A On the spilling, when it spills, right away it is mopped up with mops.

7

8

Q Would you say they were safety-conscious on this ship?

9

A I would say they were, yes.

10

11

Q Have you seen measurements of this passageway before you testified today?

12

13

A No. I before made a guess. I seen it today, the measurement.

14

15

Q You did see measurements before you testified today?

16

A Right.

17

18

Q Is the overflow line that we see attached to the ice cube maker gravity-fed?

19

A It is.

20

Q It is gravity-fed?

21

A Right.

22

23

Q So there is no force or pump behind the water that comes out of this line?

24

25

A No. The only thing is about that sometime you have a drip type overflow and sometime you have what you

1
2 call a full throttle overflow.

3 Q What do you mean by a full throttle overflow?

4 A The pipe is fully discharging.

5 Q What is the size of this pipe that is on your
6 overflow line?

7 A I would say for this machine it should be about --

8 Q Not what it should be.

9 A I don't know exactly from the measurements.

10 Q You can look at the photographs and tell us,
11 can't you?

12 A Looks about 3/4 of an inch up to 1 inch.

13 Q When you say 3/4 of an inch, what measurement
14 are you talking about, the diameter inside the pipe?

15 A That's the outside diameter.

16 Q That's the outside diameter? Is that the
17 measurement on the outside of the hole or on the inside?

18 A The outside.

19 Q What would the diameter of the hole inside be,
20 about?

21 A A little bit more than half an inch.

22 Q If this drain below the overflow pipe is open
23 and working properly is there any spillage?

24 A I don't understand the question.

25 Q I am referring to Plaintiff's Exhibit 11 now.

2 There is a collar on this drain, is there not?

3 A Right.

4 Q What is the height of the collar above the deck?

5 A By looking at it, about an inch and a half.

6 Q There is a drain inside that round collar.

7 A Yes. You have a little grating covering the
8 drain pipe itself.

9 Q If the grating is clean or clear and if the drain
10 pipe itself is clear do you have any spillage from this?

11 A Yes, you would.

12 Q Where?

13 A The distance of the pipe itself, the drain pipe
14 being so high from it. When you have a pull pipe dis-
15 charging it will hit the grating and will splash out out of
16 this.

17 Q How fast does it come out of that pipe?

18 A Sometimes it's a full pipe, no pressure but it's
19 a full pipe.

20 Q Gravity-fed?

21 A Right. And sometime you will have only drips.
22 When it drips the water goes automatically down the
23 drain, but when you have a full pipe hitting this grating
24 it will splash because of the distance from the pipe
25 into the grating.

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Q Are you saying this is improperly designed?

A I am saying it is improperly designed, yes.

Q Would you tell me once again what you estimate the distance to be from the top of the collar to the bottom of the overflow pipe, to the opening of the overflow pipe?

A By the looks of it, about an inch and a half.

Q You have given some opinions this afternoon about safety measures on ships; is that correct?

A Correct.

Q Do you consider yourself to be a fairly safety-conscious individual?

A I believe I am more so than other people because of my position on the ship.

Q You mean because you are an electrician?

A Right.

Q Is that a licensed rating or unlicensed rating?

A Unlicensed rating.

Q When was the last accident you had on the ship?

A I was the chief electrician on the SS GREEN FOREST of Central Gulf Steamship Corporation.

Q What year was that?

A 1972.

Q The same year Mr. Princiotti had his accident?

A I don't know if it was the same time. I was on

the ship from August to November 22d. The accident happened, I think, in October. It happened on deck when I was performing duties.

Q Did you walk into something on the deck?

A Yes. That's on the winch where the handles that controlled the switching over from the power section of the boom and putting it in a neutral position, those handles were sticking out and it was supposed to be folded in. They were painted black and sticking out. So I was working, and then I was coming down, I kicked one of those handles.

Q You walked into one of the handles?

A Right, not seeing it, because it was at night and the handle was painted black.

Q Is a ship a safe place to work in the daytime or at nighttime?

A Definitely.

Q In the daytime?

A Yes.

Q Is the ship a safe place to work when it is at sea or when it is tied up at dock?

A It is safer at sea.

MR. CARR: I have no further questions.

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REDIRECT EXAMINATION

BY MR. WEISBERG:

Q Did you in 1971 see water at the base of this ice-making machine?

A Several times.

Q Did you in 1971 see water at the head of the steps that lead down to the crew's quarters?

MR. CARR: Objection as not covered on direct or cross-examination.

MR. WEISBERG: You may answer.

MR. CARR: Beyond the scope.

A I could see the leakages across. It wasn't much water.

Q Being safety conscious, do you know what water does on Kentile to people walking on the Kentile?

A It makes it extremely slippery.

Q When the rubber mat that you see on Plaintiff's Exhibit 5 for Identification which is running acrossship on this passageway is sometimes taken up between ports, what can you tell me with respect to the rubber mat in front of the engine room as well as the chief steward in that same passageway? Are those small rubber mats also taken up or permitted to remain?

A They are taken up too. The only mat that remains

1
2 most of the time I seen down there is that gray-colored
3 mat leading to the galley, right in front of the ice-
4 making machine. I seen that more often on the deck than
5 others.

6 MR. CARR: Objection as not responsive to any-
7 thing.

8 Q With respect to being safety-conscious, when
9 they have these little rubber mats running across the
10 Kentile from the entrance doors as you see in Plaintiff's
11 Exhibit E for Identification, should there be a rubber mat
12 running from the dark rubber mat to the top step of the
13 stairway leading down to the crew's quarters?

14 A I believe there should.

15 Q Did you at any time during your employment
16 aboard the DEFIANCE ever see such a rubber mat at the top
17 of the stairway?

18 A No, I never did.

19 MR. WEISBERG: No further questions.

20 RECROSS-EXAMINATION

21 BY MR. CARR:

22 Q You say you believe there should have been a
23 rubber mat at the top of the stairway?

24 A I believe so.

25 Q What do you base your opinion on?

1
2 A Because there is quite a big space between the
3 rubber mat that runs in the middle of this passageway and
4 to the first step of the stairway.

5 Q What do you mean by a big space?

6 A I would say almost two feet distance. So if
7 you have anything, even if a man comes down and spills his
8 coffee or anything happens over there, it is right at this
9 moment a hazard for anybody to step in this same spot.

10 Q How about the stairway itself? Are there any
11 safety features on the stairway?

12 A On the stairway, yes, because the steps itself,
13 they have to -- what do you call it? -- build in safety
14 matting.

15 Q On each step of the stairway?

16 A On each step of the stairway.

17 Q As well as on the top step?

18 A I am talking about the steps.

19 Q I am talking about the landing at the very top
20 of the stairway.

21 A The first step has that too, yes.

22 Q On the landing?

23 A Right, starting out.

24 Q Starting out, you have that safety tread on the
25 landing?

1 A Yes, right on the step itself, right.

2 Q Do you find that on all ladders aboard all of the
3 ships you have sailed on, all stairways?

4 A Yes, I do, right. On some of the ships they re-
5 moved them and put in new ones.

6 Q Did you ever see any spillage of water around
7 the drinking fountain?

8 A Sometimes, yes, sir, but usually around the
9 fountain it goes against the bulkhead and just keeps going
10 away from that, or somebody comes down and cleans it up.

11 Q A little spillage around the fountain from time
12 to time is a normal thing on all ships?

13 A On all ships, right. When an excessive spillage,
14 then you have somebody from the engine room come in and
15 make adjustments for the --

16 Q Spigot?

17 A -- spigot, yes, sir. I done that myself a few
18 times, adjustments.

19 Q You say on occasion you noticed a little spillage
20 around this drain?

21 A Yes, sir.

22 Q When you say a little spillage you mean what?

23 A I have seen some pretty heavy water around
24 that, around the drain, around the machine.

25

1
2 Q Around the machine?

3 A Right, and I seen many times in '71 where the man
4 would have to come out and mop it up.

5 Q Was that the only place you saw water in that
6 passageway?

7 A Like I said, also close to the water fountain once
8 in a while.

9 MR. CARR: I have no further questions.

10 REDIRECT EXAMINATION

11 BY MR. WEISBERG:

12 Q Did you also say there was water near the top
13 of the steps?

14 A I don't see the water itself. I seen a leakage
15 of water going through but it went to the other side.
16 That means it was wet but I didn't see the water.

17 Q Will you let me know after you get a ship as to
18 the name of the ship and approximately when it is due to
19 return to New York City?

20 A OK.

21 BY MR. CARR:

22 Q Mr. Wier, did you ever give a statement in this
23 case?

24 A I made a statement over here before.

25 Q How long ago was that?

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A Six months ago or something; I don't know exactly.

Q Do you have that statement?

MR. WEISBERG: I have that statement.

MR. CARR: Could I see it, please?

MR. WEISBERG: I have no objection to having it marked for identification. Any objection?

MR. CARR: I would like to see the statement first. If you want to mark it you may.

MR. WEISBERG: Let the record show that Mr. Weisberg is showing to Mr. Carr a two-page statement signed by the witness wherein he put his initials on the first page and signed the second page.

BY MR. CARR:

Q Is there a date on this statement somewhere?

MR. WEISBERG: There is no date on the statement.

Q Do you know when you gave this statement?

A I don't remember the date.

Q Do you remember when you signed it, how long ago?

A Six months or so.

Q Last spring sometime?

A Yes, maybe a little bit more.

MR. WEISBERG: Let me mark this as Plaintiff's Exhibit F for Identification, referring to the two-page statement.

(A two-page statement signed by the witness on the second page, with his initials on the first page, marked Plaintiff's Exhibit F for Identification, as of this date.)

(Time noted, 4 o'clock p.m.)

oOo

C E R T I F I C A T E

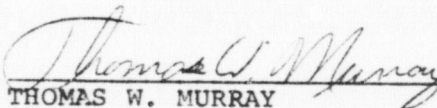
STATE OF NEW YORK)
) ss.
COUNTY OF NEW YORK)

I, THOMAS W. MURRAY, a Stenotype Reporter and
Notary Public within and for the State of New York,
do hereby certify:

That ELI M. WIER, the witness whose deposition
is hereinbefore set forth, was duly sworn by me and
that such deposition is a true record of the testi-
mony given by such witness.

I further certify that I am not related to any
of the parties to this action by blood or marriage;
and that I am in no way interested in the outcome
of this matter.

IN WITNESS WHEREOF, I have hereunto set my hand
this 12th day of November, 1974.


THOMAS W. MURRAY

I N D E XW I T N E S S

	<u>DIRECT</u>	<u>CROSS</u>	<u>REDIRECT</u>	<u>RECROSS</u>
Eli M. Wier	3	33	56, 60	57

E X H I B I T SPlaintiff's
for Ident.Page No.

A	A photograph	15
B	A photograph	16
C	A photograph	19
D	A photograph	28
E	A photograph	29
F	Two-page statement signed by the witness	61A

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 RESIDENT COUNSEL, WASHINGTON

*Received from Victor P. Pincotti;
 copy of brief + appendix
 + deposition of Elmer H. Wier
 + last testament*

11/25/75

11:45 P.M.

Thomas DeLooney

